

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE SUB - REGISTRY OF SHINYANGA

AT SHINYANGA

LAND APPEAL NO. 38 OF 2021

CHIMAGA MASAHA.....1st APPELLANT

MASELE MASAHA.....2nd APPELLANT

VERSUS

CHIMAGA MASAGA.....RESPONDENT

**[Appeal from the decision of the District Land and Housing Tribunal for
Maswa at Maswa.]**

(Hon. M.T. Ilanga, Chairman.)

**dated the 21st day of October, 2016
in
Land Application No. 15 of 2015**

JUDGMENT

7th June & 15th December, 2023.

S.M. KULITA, J.

This is an Appeal from the District Land and Housing Tribunal for Maswa. The story behind this appeal in a nut shell is that, the respondent sued the appellants herein for the following; a declaration that he is the lawful owner of the suit land, eviction of the appellants and permanent restraint on entering to the suit premises against the appellants. The

apparently be shortly seen, I will not endeavor into reproducing the same, suffices it to say that, the fifth, sixth, seventh, tenth and twelfth grounds of appeal call for re-evaluation of the evidence in the record.

As long as this is the first appellate court, it is enjoined with the powers to re-evaluate the trial tribunal's evidence when need arises, and come out with its own findings. See, **Future Century Ltd V. Tanesco, Civil Appeal No. 5 of 2009, CAT at DSM** in which it was held;

"This is a first appeal. The principle of law established by the Court is that the appellant is entitled to have the evidence re-evaluated by the first appellate court and give its own findings"

In doing the said task of re-evaluating the evidence on record, I had to earnestly go through the entire record of the tribunal.

It is not in dispute that, this case was heard and determined by the District Land and Housing Tribunal. The said Tribunal exercises its duties in accordance with the **Land Disputes Courts Act [Cap. 216 RE 2019]** and the **Land Disputes Courts (the District Land and Housing Tribunal) Regulations, 2003**. However, both legislations do not have provisions guiding the Tribunal in the mode of recording the evidence. Therefore, in terms of **section 51(2) of the said Land Disputes Courts Act**, the **Civil Procedure Code [Cap. 33 RE 2019]** should apply. Now,

This is not the court of doing a guess work. As the 1st appellate court, in the cause of re-evaluating the evidence, it cannot be in a position to know as to what were the question that led to the said recorded short answers seen in the tribunal's proceedings. This is a very serious irregularity.

The said irregularity vitiates the whole proceedings of the tribunal from 3rd August, 2016 to the end of hearing the case, its resultant judgment and subsequent orders thereto.

In the event and for the interest of justice, I hereby order **re-trial** of the case **from where the proceedings have been nullified**. This should be done immediately, **before another Chairperson with a new set of Assessors**. As this was the irregularity committed by the trial tribunal, I make no order as to costs.




S.M. KULITA
JUDGE
15/12/2023

DATED at **SHINYANGA** this 15th day of December, 2023.


S.M. KULITA
JUDGE
15/12/2023